

AMENDED IN ASSEMBLY MAY 3, 2005

AMENDED IN ASSEMBLY APRIL 12, 2005

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 771

Introduced by Assembly Member Saldana

February 18, 2005

An act to amend Section 11430.30 of the Government Code, and to amend Sections 30319, 30320, *30321*, 30322, and 30326 of, and to repeal Sections ~~30323~~, 30324, 30327, and 30329 of, the Public Resources Code, relating to coastal resources.

LEGISLATIVE COUNSEL'S DIGEST

AB 771, as amended, Saldana. Coastal resources: California Coastal Commission: ex parte communications.

(1) Existing law provides that a communication otherwise prohibited by a specified provision governing ex parte communication in an administrative adjudication proceeding from an employee or representative of an agency that is a party to the presiding officer is permissible in certain circumstances. One of those circumstances is where the communication is for the purpose of advising the presiding officer concerning specified matters in an adjudicative proceeding that is nonprosecutorial in character, and the advice involves an issue in a proceeding of the San Francisco Bay Conservation and Development Commission, *the* California Tahoe Regional Planning Agency, *the* Delta Protection Commission, *the* State Water Resources Control Board, or a regional water quality control board.

This bill would also allow an ex parte communication under those circumstances where the advice involves an issue in a proceeding of the California Coastal Commission.

(2) The existing California Coastal Act of 1976 requires a person who applies to the California Coastal Commission for approval of a development permit to provide the commission with the names and addresses of all persons who, for compensation, will be communicating with commission staff on the applicant's behalf or on behalf of the applicant's business partners, and requires that a disclosure be provided to the commission prior to the communication.

This bill would require a person who applies to the commission for approval of a development permit to provide that information, to the extent those communications are allowed under specified provisions governing ex parte communications in an administrative adjudication proceeding, and would additionally require the disclosure be placed in the public record prior to an official commission proceeding on the action.

(3) The act provides that for purposes of the act, except as provided, an "ex parte communication" is any oral or written communication between a member of the commission and an interested person, about a matter within the commission's jurisdiction, which does not occur in a public hearing, workshop, or other official proceeding, or on the official record of the proceeding on the matter.

This bill would revise that definition of "*ex parte communication*" to *additionally* provide that an "ex parte communication" is ~~any oral or written communication, either direct or indirect, between a member of the commission and any person, and~~ about a matter within the commission's jurisdiction, ~~which and~~ does not occur in a ~~public hearing, workshop, or other official and publicly noticed proceeding, or on the official record of the proceeding on the matter.~~ The bill would ~~also revise provisions describing the types of communications that are not ex parte communications, as specified~~ *provide that an ex parte communication relating to a pending or impending adjudicative proceeding is subject to specified provisions governing ex parte communications.*

(4) *Existing law excludes any communication between a staff member acting in his or her official capacity and an interested person as an ex parte communication.*

This bill would instead exclude a communication between specified staff members and nonvoting commission members acting in that capacity as an ex parte communication. The bill would prohibit a commission member from engaging in communication with a person regarding any matter in litigation to which the commission is a party,

except as specified. The bill would subject a commission member who knowingly violates those provisions governing ex parte communications to a civil fine, not to exceed \$7,500.

(5) *The act defines “a matter within the commission’s jurisdiction” to include specified permit actions, reviews, programs, plans, and other prescribed matters.*

This bill would additionally include enforcement proceedings as a matter within the commission’s jurisdiction.

The bill would eliminate provisions ~~defining the term “interested person” for purposes of the act, and provisions governing requiring~~ the disclosure and reporting of ex parte communications.

~~(4)~~

(6) The act authorizes any person, including a commission member, to request the commission staff to conduct a workshop on any matter before the commission or on any subject that could be useful to the commission, and requires that, when the executive director of the commission determines that a request is appropriate and feasible, a workshop be scheduled at an appropriate time and location.

This bill would require that such a workshop be publicly noticed for an appropriate time and location.

~~(5)~~

(7) The act prohibits a commission member or alternate from making, participating in making, or in any other way attempting to use his or her official position to influence a commission decision about which the member or alternate has knowingly had an ex parte communication that has not been reported, and imposes a civil penalty not to exceed ~~\$7500~~ \$7,500 on a commission member who knowingly violates that prohibition.

This bill would eliminate that provision.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11430.30 of the Government Code is
2 amended to read:
3 11430.30. A communication otherwise prohibited by Section
4 11430.10 from an employee or representative of an agency that is
5 a party to the presiding officer is permissible in any of the
6 following circumstances:

1 (a) The communication is for the purpose of assistance and
2 advice to the presiding officer from a person who has not served
3 as investigator, prosecutor, or advocate in the proceeding or its
4 preadjudicative stage. An assistant or advisor may evaluate the
5 evidence in the record but shall not furnish, augment, diminish,
6 or modify the evidence in the record.

7 (b) The communication is for the purpose of advising the
8 presiding officer concerning a settlement proposal advocated by
9 the advisor.

10 (c) The communication is for the purpose of advising the
11 presiding officer concerning any of the following matters in an
12 adjudicative proceeding that is nonprosecutorial in character:

13 (1) The advice involves a technical issue in the proceeding and
14 the advice is necessary for, and is not otherwise reasonably
15 available to, the presiding officer, provided the content of the
16 advice is disclosed on the record and all parties are given an
17 opportunity to address it in the manner provided in Section
18 11430.50.

19 (2) The advice involves an issue in a proceeding of the San
20 Francisco Bay Conservation and Development Commission, the
21 California Coastal Commission, *the* California Tahoe Regional
22 Planning Agency, *the* Delta Protection Commission, *the State*
23 Water Resources Control Board, or a regional water quality
24 control board.

25 SEC. 2. Section 30319 of the Public Resources Code is
26 amended to read:

27 30319. A person who applies to the commission for approval
28 of a development permit shall provide the commission with the
29 names and addresses of all persons who, for compensation, will
30 be communicating with commission staff on the applicant's
31 behalf or on behalf of the applicant's business partners, to the
32 extent those communications are allowed under Article 7
33 (commencing ~~with~~ *with* Section 11430.10) of Chapter 4.5 of
34 Part 1 of Division 3 of Title 2 of the Government Code. That
35 disclosure shall be provided to the commission prior to a
36 communication, and shall be placed in the public record prior to
37 an official commission proceeding on the action. Failure to
38 comply with that disclosure requirement is a misdemeanor and,
39 upon conviction, the person shall be punished by a fine of five
40 thousand dollars (\$5,000) or imprisonment in the county jail not

1 exceeding six months, and, in addition, shall be subject to
2 immediate denial of the permit.

3 SEC. 3. Section 30320 of the Public Resources Code is
4 amended to read:

5 30320. (a) The people of California find and declare that the
6 duties and responsibilities of the commission are sensitive and
7 extremely important for the well-being of current and future
8 generations and that the public interest and principles of
9 fundamental fairness and due process of law require that the
10 commission conduct its affairs in an open, objective, and
11 impartial manner free of undue influence and the abuse of power
12 and authority. It is further found that, to be effective, California's
13 coastal protection program requires public awareness,
14 understanding, support, participation, and confidence in the
15 commission and its practices and procedures. Accordingly, this
16 article is necessary to preserve the public's welfare and the
17 integrity of, and to maintain the public's trust in, the commission
18 and the implementation of this division.

19 (b) The people of California further find that in a democracy,
20 due process, fairness, and the responsible exercise of authority
21 are all essential elements of good government which require that
22 the public's business be conducted in public meetings, with
23 limited exceptions for sensitive personnel matters and litigation
24 in accordance with the law, and on the official record.
25 Reasonable restrictions are necessary and proper to prevent
26 future abuses and misuse of governmental power so long as all
27 members of the public are given adequate opportunities to
28 present their views and opinions through written or oral
29 communications on the official record either before or during the
30 public hearing on any matter before the commission.

31 SEC. 4. Section 30321 of the Public Resources Code is
32 amended to read:

33 30321. For purposes of this article, "a matter within the
34 commission's jurisdiction" means any permit action, federal
35 consistency review, appeal, local coastal program, port master
36 plan, public works plan, long-range development plan,
37 categorical or other exclusions from coastal development permit
38 requirements, *enforcement proceeding*, or any other
39 quasi-judicial matter requiring commission action, for which an
40 application has been submitted to the commission.

1 ~~SEC. 4.~~

2 ~~SEC. 5.~~ Section 30322 of the Public Resources Code is
3 amended to read:

4 30322. (a) For purposes of this article, except as provided in
5 subdivision (c), an “ex parte communication” is any oral or
6 written communication, either direct or indirect, between a
7 member of the commission and ~~any~~ *an interested* person, about a
8 matter within the commission’s jurisdiction, which does not
9 occur in a public hearing, workshop, or other official and
10 publicly noticed proceeding, or on the official record of the
11 proceeding on the matter.

12 (b) An ex parte communication relating to a pending or
13 impending adjudicative proceeding shall be restricted as provided
14 in Article 7 (commencing ~~with~~ *with* Section 11430.10) of
15 Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government
16 Code.

17 (c) The following communications are not ex parte
18 communications:

19 (1) Any communication between a staff member acting in his
20 or her official capacity and any commission member or ~~other~~
21 *interested* person.

22 (2) *Any communication limited entirely to procedural issues,*
23 *including, but not limited to, the hearing schedule, location,*
24 *format, or filing date.*

25 (3) Any communication that takes place on the record during
26 an official proceeding of a state, regional, or local agency that
27 involves a member of the commission who also serves as an
28 official of that agency.

29 ~~(3)~~

30 (4) Any communication between a member of the
31 commission, with regard to any action of another state agency or
32 of a regional or local agency of which the member is an official,
33 and any other official or employee of that agency, including any
34 person who is acting as an attorney for the agency, ~~unless that~~
35 ~~agency is a party, as defined in Section 11405.60 of the~~
36 ~~Government Code, to an action pending or impending before the~~
37 ~~commission.~~

38 ~~(4)~~

39 (5) Any communication between a nonvoting commission
40 member and a staff member of a state agency where both the

1 commission member and the staff member are acting in an
2 official capacity.

3 *(6) Any communication to a nonvoting member relating to an*
4 *action pending before the commission, where the nonvoting*
5 *commission member does not participate in that action, either*
6 *through written or verbal communication, on or off the record,*
7 *with other members of the commission.*

8 ~~(5)~~

9 *(d) Notwithstanding any other provision of law, a commission*
10 *member shall not engage in a communication with a person*
11 *regarding any matter in litigation to which the commission is a*
12 ~~*party, except in a publicly noticed proceeding, or in a closed*~~
13 ~~*session as permitted by law, or with the commission's attorneys.*~~
14 *party, except for any of the following:*

15 *(1) In a publicly noticed proceeding.*

16 *(2) In a closed session, as permitted by law.*

17 *(3) Within formal settlement discussions with the presence of*
18 *the commission's attorneys.*

19 *(4) With the commission's attorneys.*

20 ~~(d)~~

21 *(e) In addition to any other applicable penalty, including a*
22 *civil fine imposed pursuant to Section 30824, a commission*
23 *member who knowingly violates this section is subject to a civil*
24 *fine, not to exceed seven thousand five hundred dollars (\$7,500)*
25 *for each communication. Notwithstanding any other provision of*
26 *law, the court may award attorneys' fees and costs to the*
27 *prevailing party.*

28 ~~SEC. 5. Section 30323 of the Public Resources Code is~~
29 ~~repealed.~~

30 SEC. 6. Section 30324 of the Public Resources Code is
31 repealed.

32 SEC. 7. Section 30326 of the Public Resources Code is
33 amended to read:

34 30326. A person, including a commission member, may
35 request the commission staff to conduct a workshop on any
36 matter before the commission or on any subject that could be
37 useful to the commission. When the executive director
38 determines that a request is appropriate and feasible, a workshop
39 shall be scheduled at, and publicly noticed for, an appropriate
40 time and location.

- 1 SEC. 8. Section 30327 of the Public Resources Code is
- 2 repealed.
- 3 SEC. 9. Section 30329 of the Public Resources Code is
- 4 repealed.